

REMARKS

Claims 1-46 were presented for examination and were pending in this application. In an Official Action dated June 25, 2004, claims 1, 3-8, 12-16, 26, and 30-32 were allowable, and claims 28, 29, 34, and 36 were rejected. Applicant appreciates Examiner's acknowledgement of the allowability of claims 1, 3-8, 12-16, 26, and 30-32. Applicant thanks Examiner for examination of the claims pending in this application and addresses Examiner's comments below.

Applicant herein amends claims 28 and 34. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution of the application in a manner consistent with the Patent Office Business Goals, 65 Fed. Reg. 54603 (Sept. 8, 2000). In making these amendments, Applicant has not and does not narrow the scope of the protection to which Applicant considers the claimed invention to be entitled and does not concede that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicant reserves the right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that Examiner reconsider all outstanding objections and rejections, and withdraw them.

Formalities

The Examiner has recommended amending the first sentence of the specification to more clearly delineate Applicant's priority claim and the relationship between the

applications thereof. Applicant has amended the first sentence of the specification to clarify the priority claims of this application per the Examiner's recommendations. Specifically, the first sentence has been amended to specify the relationship between the present application and PCT/US00/07793, now published as WO 00/56898, and to clarify the priority claim to provisional application no. 60/126,015 as stated in the original declaration filed 06/19/2002. However, because application no. 09/905,704 bears no direct relationship to PCT/US00/07793 (or WO 00/56898), no related application claim has been made between these applications.

Applicant appreciates Examiner's acknowledgement of a priority claim based on PCT/US00/07793. The Examiner has noted that no certified copy of this application has been filed. 35 U.S.C. § 119(b)(3) requires that copies of foreign applications to which priority is claimed be submitted under certification by the foreign receiving office in which the foreign application was filed. This application was filed in the United States receiving office, rather than a foreign receiving office, thus Applicant respectfully submits that no certified copy need be filed.

The Examiner has stated that the oath or declaration is defective. Applicant has submitted a replacement declaration herewith, indicating a priority claim to PCT/US00/07793 as listed in the original declaration, adding a notation that PCT/US00/07793 is now published as WO 00/05898. Applicant respectfully submits that only priority claims to foreign applications need be made in the declaration. 37 U.S.C. § 1.63. Claims of priority to U.S. applications are properly made in the first paragraph of the specification, and thus are not required to be listed in the declaration. 35 C.F.R. § 120.

Thus, Applicant submits that the Examiner's concerns regarding the aforementioned formalities have been corrected. As these amendments are made to comply with requirements of form expressly set out by the Examiner in the Final Action dated June 25, 2004, Applicant respectfully submits that they be entered. 37 C.F.R. § 1.116(b).

Claim Rejections

Claims 34 and 36 have been rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claim 34 has been amended to recite a "composition comprising isolated immortal human microvascular cells..." Applicant respectfully submits that claim 34 now meets the requirements of 35 U.S.C. § 101. Claim 36 appears to have been rejected solely based on its dependency on claim 34. Thus, Applicant respectfully submits that claims 34 and 36 are now in condition for allowance.

Claims 28 and 29 have been rejected under 35 U.S.C. § 112 as allegedly being indefinite for not specifically pointing out and distinctly claiming the subject matter that the Applicant regards as the invention. Claim 28 has been amended to remove dependencies to all claims but claim 1. Applicant therefore respectfully submits that claim 28 now meets the requirements of 35 U.S.C. § 112. Claim 29 appears to have been rejected solely based on its dependency on claim 28. Thus, Applicant respectfully submits that claims 28 and 29 are now in condition for allowance.

These amendments of the claims are made so as to more clearly define the invention, and not to narrow their scope of protection with respect to the prior art, or with respect to potentially infringing devices/compositions/articles. Applicant respectfully submit that these amendments place the not previously indicated to be allowable in condition for allowance and request that they be entered as permitted under 37 C.F.R. § 1.116(b).

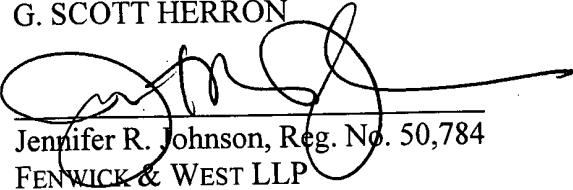
Reconsideration and allowance of claims 28-29 and 38-39 are solicited.

In the event the examiner elects to continue rejection of claims not previously indicated to be allowable, he is respectfully requested to enter this amendment in order to simplify the issues for appeal.

Respectfully Submitted,
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